

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEON HAYGOOD,

Plaintiff,

v.

GAVIN NEWSOM, et al.,

Defendants.

No. 2:20-cv-0239-EFB P

ORDER

Plaintiff, a state prisoner proceeding without counsel in this action brought pursuant to 42 U.S.C. § 1983, seeks leave to proceed in forma pauperis. ECF No. 2.

Application to Proceed In Forma Pauperis

Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, plaintiff's request to proceed in forma pauperis is granted.

Screening

I. Legal Standards

Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it

1 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
 2 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41
 3 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of
 4 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of
 5 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to
 6 relief above the speculative level on the assumption that all of the complaint’s allegations are
 7 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
 8 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
 9 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

10 In reviewing a complaint under this standard, the court must accept as true the allegations
 11 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740
 12 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in
 13 the plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must
 14 satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule
 15 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the
 16 pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the
 17 grounds upon which it rests.” *Twombly*, 550 U.S. at 562-563 (2007).

18 II. Analysis

19 The gravamen of plaintiff’s complaint is that the water at Mule Creek State Prison
 20 (“MSCP”) is contaminated by sewage and other impurities and, hence, unfit to drink. ECF No. 1
 21 at 6-7. He has sued fourteen defendants, most of whom are current or former state officials, in
 22 connection with this alleged deficiency. *Id.* at 3-5. Plaintiff has failed to describe how each of
 23 these defendants was directly and personally responsible for his alleged injuries, however. *See*
 24 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (noting that a complaint must “give the
 25 defendant fair notice of what the . . . claim is and the grounds upon which it rests . . .”).
 26 Although plaintiff has given ample description of how the water at MSCP is allegedly unclean
 27 and how this has allegedly harmed him, it is impossible to parse how each of the fourteen

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defendants had some role in the matter and was allegedly culpable. He will be given leave to amend to remedy this deficiency.

III. Leave to Amend

Plaintiff is cautioned that any amended complaint must identify as a defendant only persons who personally participated in a substantial way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if he does an act, participates in another's act or omits to perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also include any allegations based on state law that are so closely related to his federal allegations that "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

The amended complaint must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Any amended complaint must be written or typed so that it so that it is complete in itself without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter being treated thereafter as non-existent.") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)).

Any amended complaint should be as concise as possible in fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual background which has no bearing on his legal claims. He should also take pains to ensure that his amended complaint is as legible as possible. This refers not only to penmanship, but also spacing and organization. Plaintiff should carefully consider whether each of the defendants he names actually had involvement in the constitutional violations he alleges. A "scattershot" approach in which plaintiff names dozens of defendants will not be looked upon favorably by the court.

Conclusion


Accordingly, it is ORDERED that

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED;

2. Plaintiff's complaint (ECF No. 1) is dismissed with leave to amend within 30 days from the date of service of this order; and

3. Failure to file an amended complaint that complies with this order may result in the dismissal of this action for the reasons stated herein.

DATED: April 22, 2020.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE